Filed 1/30/19 Gidney v. City of Bishop CA4/2

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

MARSHALL-ALAN GIDNEY, Plaintiff and Appellant, v. CITY OF BISHOP, Defendant and Respondent.	E069699 (Super.Ct.No. SICVCV1761468) OPINION

APPEAL from the Superior Court of Inyo County. Brian J. Lamb, Judge. Affirmed.

Marshall-Alan Gidney, in pro. per., for Plaintiff and Appellant.

Grossberg & Hoehn, Scott J. Grossberg and Laurel A. Hoehn for Defendant and Respondent.

I. INTRODUCTION

Plaintiff and appellant, Marshall-Alan Gidney, sued defendant and respondent, City of Bishop (the City), for libel. The trial court sustained the City's demurrer to the

first amended complaint (FAC) without leave to amend. Gidney appeals from the judgment of dismissal entered after these events. We affirm.

II. BACKGROUND

On September 1, 2017, Gidney allegedly discovered a media bulletin published on the Bishop Police Department's Web site. It was accessible through a Google search of Gidney's name. The media bulletin stated, in relevant part: "Domestic Battery [¶] Occurred on E. Pine, Bishop. Physical: Male half shoved RP, punched her in the face, and spit in her hair. Disposition: Marshall Allan Gidney charged 243(e)(1)PC Arrest Made." (Capitalization omitted.) The media bulletin was dated December 3, 2015. Gidney filed and served his original complaint in September 2017.

Gidney alleged that the media bulletin was false. He claimed that the bulletin "differed dramatically" from a police report of the December 3, 2015, incident. According to the police report, Gidney's wife called 911 after he spit on her hair and face and threw her to the floor. He denied spitting on her and using any physical force against her. Instead, he claimed that she threw a cup of liquid at him and punched him approximately 150 times. The police report contained no statement from Gidney's wife claiming that he punched her in the face. The FAC alleged a cause of action for libel against the City and sought $1.5 million in damages.

The City demurred to the FAC, but the record does not contain the City's moving papers, any opposition brief, or any reply brief. At the hearing on the matter, the City argued that Gidney's cause of action was time-barred by the one-year statute of

limitations, because the media bulletin was first published on the Internet in 2015. Gidney indicated at the hearing that he had not filed an opposition brief. The court sustained the demurrer without leave to amend on the ground that the one-year statute of limitations conclusively barred Gidney's cause of action.

III. DISCUSSION

Gidney contends that the court could not dismiss his case without hearing testimony from a competent witness, and because the court had "zero facts" before it, the order sustaining the demurrer had "zero authority." We reject this argument. Gidney misunderstands the nature of a demurrer. A demurrer tests the legal sufficiency of the complaint. (*Rakestraw v. California Physicians' Service* (2000) 81 Cal.App.4th 39, 42.) The court treats as true the facts alleged in the complaint and facts appearing in exhibits to the complaint, and it may also consider matters that may be judicially noticed. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318; *Dodd v. Citizens Bank of Costa Mesa* (1990) 222 Cal.App.3d 1624, 1627.) But the court may not otherwise consider evidence extrinsic to the complaint. (E.g., *Afuso v. United States Fid. & Guar. Co.* (1985) 169 Cal.App.3d 859, 862] [trial court improperly considered evidence extrinsic to complaint on demurrer], overruled on another ground by *Moradi-Shalal v. Fireman's Fund Ins. Co.* (1988) 46 Cal.3d 287, 311.) Accordingly, there was no error in failing to consider witness testimony.

Gidney also contends his action was not time-barred because he did not discover the media bulletin until September 2017, and he filed suit that same month. For several

reasons, we also reject this argument. First, the record does not permit us to meaningfully review the merits of the court's ruling. We presume a judgment is correct, and the "party challenging a judgment has the burden of showing reversible error by an adequate record." (*Ballard v. Uribe* (1986) 41 Cal.3d 564, 574; *Boeken v. Philip Morris Inc.* (2005) 127 Cal.App.4th 1640, 1658.) When the appellants predicate error only on the parts of the record favorable to them, and do not present portions of the record that may provide grounds for affirmance, they have failed to carry their burden. (*Osgood v. Landon* (2005) 127 Cal.App.4th 425, 435.) We may reject the appellants' arguments and affirm the presumptively correct judgment for an insufficient record. (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 132; *Ballard v. Uribe, supra,* at p. 575.) In the present case, Gidney has failed to provide the City's demurrer and supporting papers. We therefore cannot say whether the arguments that persuaded the court were incorrect. Rather, we presume the judgment was correct.

Second, to the extent we can independently review the complaint and the merits of the court's ruling, Gidney has not shown the court erred. The statute of limitations for libel is one year. (Code Civ. Proc., § 340, subd. (c).) The limitations period starts running when the defendant first distributes the libelous statement to the public. (*Traditional Cat Assn., Inc. v. Gilbreath* (2004) 118 Cal.App.4th 392, 401.) This is true regardless of when the plaintiff actually became aware of the publication. (*Ibid.*) And, this rule applies to mediums such as books and Internet Web sites alike. (*Id.* at p. 404.) Gidney based his lawsuit on a December 2015 media bulletin, but did not file suit until

September 2017, well after the one-year statute of limitations expired. Gidney argues the statute of limitations did not start running until he discovered the media bulletin because the bulletin was "communicated in an inherently secretive manner," but there was nothing inherently secretive about the police department's Internet Web site. The FAC described how the media bulletin was publicly accessible through a Google search of Gidney's name on the Internet. His delayed discovery of the publicly available media bulletin did not delay accrual of the cause of action or toll the statute of limitations. (*Id.* at pp. 402, 404.)

IV. DISPOSITION

The judgment is affirmed. The City shall recover its costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1).)

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

FIELDS
J.

We concur:

RAMIREZ
P. J.

MENETREZ
J.